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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,418	11/16/2001	Rudolf Farkas	455610-2500	8543
20999	7590	03/21/2005	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			DU, THUAN N	
			ART UNIT	PAPER NUMBER

2116

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/988,418

Applicant(s)

FARKAS, RUDOLF

Examiner

Thuan N. Du

Art Unit

2116

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 1-20 have been cancelled. Claims 21-38 have been added. Claims 21-38 are presented for examination.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 21-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claims 21, 24, 28, 31 and 35 recite the limitation "the operation" in preamble. There is insufficient antecedent basis for this limitation in the claim.
5. Claims 22-23, 25-27, 29-30, 32-34 and 36-38 are also rejected for incorporating the above deficiency by dependency.

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 24-27 and 31-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pickering (U.S. Patent No. 4,217,651).

8. Regarding claims 24 and 25, Pickering teaches a system substantially as claimed comprising:

means for defining a range of values of a variable (X, Y) corresponding to one or more physical restraints of a corresponding physical structure of the instrument [col. 3, lines 41-42];

means for selecting a value for the variable [col. 4, lines 48-49]; and

means for confirming the selected value for the variable is within the defined range of values [col. 4, lines 48-53].

Pickering teaches that the system including a storage device (memory 22) for storing basic values of variable [col. 2, lines 57-59; col. 4, lines 62-64] but does not explicitly teach means for storing the selected value of the variable. However, one of ordinary skill in the art would have recognized that if the values of X and Y are appropriate, the values are selected and may then be used in future testing and measuring (the values could be set as basic values). Therefore, it would have been obvious to one of ordinary skill in the art to store the selected appropriate values in the memory for future use.

9. Regarding claims 26 and 27, Pickering teaches that the value of the variable is transferred from one place (memory) to another (microprocessor) [col. 4, lines 62-64].

10. Regarding claims 31-34, since they recite method of operating of the apparatus defined in the apparatus claims, they are rejected accordingly based on the rejection of the apparatus claims.

11. Regarding claims 35 and 38, Pickering teaches a system substantially as claimed comprising:

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a predetermined range of values for the variable corresponding to one or more physical restraints of a corresponding physical structure of the instrument [col. 3, lines 41-42]; and

a value stored for the variable, the value corresponding to an operating parameter of the corresponding physical structure of the instrument [col. 2, lines 57-59; col. 4, lines 62-64];

Pickering does not explicitly teach that the variable is not set to the stored value if the value for the variable is determined to be outside of the predetermined range. However, Pickering teaches that the value for the variable is determined to be outside of the predetermined range (uncertainty value) is displayed [col. 2, lines 2-3]. Therefore, it would have been obvious to one of ordinary skill in the art to recognize that Pickering would not set the uncertainty value as basic value. As such, the uncertainty value would not be stored in the memory.

12. Regarding claim 36, it would have been obvious to one of ordinary skill in the art at the time of the invention to recognize that a change in value of one variable requires a change in value of another variable if the two variables proportionally related.

13. Regarding claim 37, one of ordinary skill in the art would have recognized that in order to store a valid value, the iteration should be repeated until the valid value is found. Therefore, it would have been obvious for the system to request another value if the previous value is determined to be outside of the predetermined range.

#### ***Allowable Subject Matter***

14. Claims 21-23 and 28-30 are allowable if the outstanding lack of antecedent basis has been corrected.

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*Conclusion*

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuan N. Du whose telephone number is (571) 272-3673. The examiner can normally be reached on Monday and Wednesday-Friday: 9:30 AM - 8:00 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H. Browne can be reached on (571) 272-3670.

Central TC telephone number is (571) 272-2100.

The fax number for the organization is (703) 872-9306.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).



Thuan N. Du  
March 15, 2005